

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

01/22/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-017015

FILED: _____

NORTH POINT CROSSING HOMEOWNERS
ASSOCIA

JAMES H HAZLEWOOD

v.

JOE A HAGGERTY, et al.

WILLIAM W BLACK

ROBERT P WEIDNER
PHX JUSTICE CT-NW
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

Appellant has requested oral argument.

Good cause not appearing,

IT IS ORDERDED denying the request for Oral Argument.

This case has been under advisement since the receipt of Appellant's reply brief on December 4, 2001. This Court has reviewed and considered the file from the North West Phoenix Justice Court, and the Memoranda submitted by counsel.

Appellee/Plaintiff, North Point Crossing Homeowners Association filed suit in the North West Justice Court to

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collect sanctions and assessments for a homeowner (the Appellant/Defendant, Joe A. Haggerty) who had failed to pay fines, penalties or assessments due pursuant to his contract with the Homeowners Association. Appellant failed to file a disclosure statement pursuant to Rule 26.1, Arizona Rules of Civil Procedure. Appellant's contention that he is not required to file this disclosure statement absent a court order is without merit. When Appellant and his attorney failed to appear at the time scheduled for oral argument on Appellee/Plaintiff's Motion for Sanctions on May 29, 2001, the trial court struck Appellant's answer to the complaint and entered a Default Judgment against him. A Default Judgment was entered on June 27, 2001 for \$9,277.00 in Appellee's favor. Appellant filed a Motion to Set Aside the Default Judgment on August 20, 2001. That motion was denied without oral argument on August 27, 2001. Appellant filed a timely Notice of Appeal in this case.

The first issue is whether the trial court erred in denying Appellant's Motion to Set Aside Default Judgment. The standard of review for an appellate court regarding a trial court's order granting or denying relief under Rule 60(c), Arizona Rules of Civil Procedure, is abuse of discretion.¹ This Court finds no abuse of discretion in the trial court's action denying Appellant's motion for relief from the Default Judgment. This Court notes that Appellant while acting *Pro Se* failed to file the Rule 26.1, Arizona Rules of Civil Procedure, Disclosure Statement. Appellant also contends that the trial court erred in failing to hold a separate hearing to determine if lesser sanctions than a default would be appropriate. However, Appellant ignores the fact that the May 29, 2001 court date was such a hearing scheduled on Appellee/Plaintiff's Motion for Sanctions. There was a hearing scheduled, Appellant just failed to attend it. This Court finds no error.

IT IS THEREFORE ORDERED affirming the judgment of the North West Phoenix Justice Court.

¹ Mission Insurance Company v. Cash, Sullivan and Cross, 170 Ariz. 105, 822 P.2d 1 (App. 1991).

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IT IS FURTHER ORDERED remanding this matter back to the
North West Phoenix Justice Court for all future and further
proceedings.